



Uniform Law Commission

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February 9, 2010

Representative David Cullen
Wisconsin General Assembly
Room 216 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Cullen,

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1.

Article 1 impacts every transaction governed by the UCC, including any sale of goods, any transfer of any negotiable instrument or check, any commercial electronic funds transfer, any letter of credit, any warehouse receipt or bill of lading, any transfer of an investment security, and any credit transaction in which a security interest is taken in specific collateral. These are the transactions governed by specific articles of the UCC and encompass the bulk of commercial activity in the American economy. Although its rules and definitions are often overlooked in rank of importance and are frequently considered mundane, it is the Article that binds the other Articles together to form one comprehensive and coherent code. Therefore, it is very important to have it up-to-date and consistent with the rest of the UCC for efficient economic function in the United States.

In 2001, the Uniform Law Commission completed a review and modernization to UCC Article 1. Since 2001, 38 states have enacted the revised Article 1, including Illinois, Minnesota, and Iowa. Currently four other states have introduced revised Article 1.

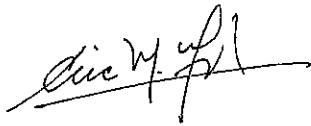
Assembly Bill 687/Senate Bill 472 would update current Wisconsin law, bringing it into conformity with the majority of other states. The changes expressed in AB687/SB472 will not detrimentally impact other sections of the UCC already enacted in Wisconsin. Many changes are of a technical,

non-substantive nature, such as reordering and renumbering sections, and adding gender-neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Changes to definitional terminology provide greater clarity in light of jurisprudence and practical considerations.

During the drafting of Revised Article 1, the drafting committee determined that some substantive changes were needed. The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Because of the importance of the Revised Article 1 to harmonizing the provisions of code currently in place in Wisconsin and importance of uniformity in the codes that govern interstate commerce, I urge the Wisconsin legislature to act favorably on AB687/SB472.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Fish", with a stylized flourish extending from the end.

Eric Fish
Legislative Counsel